IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1040 of 1997

with

CRIMINAL APPEAL No 1041 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

STATE OF GUJARAT

Versus

FAIJUBHAI ADAMBHAI MALEK

Appearance:

1. Criminal Appeal No. 1040 of 1997

PUBLIC PROSECUTOR for Petitioner

2. Criminal AppealNo 1041 of 1997

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/05/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

The State has preferred the Criminal Appeal No.1041 of 1997 being aggrieved by the order of acquittal recorded by the Addl. City Sessions Judge, Ahmedabad in Sessions Case No.179 of 1996 acquitting the accused for an offence punishable under Sec.307 of Indian Penal Code and the State has also preferred Criminal Appeal No.1040 of 1997 for enhancement of sentence imposed on the respondent-accused by the learned Addl. City Sessions Judge holding the accused guilty for an offence punishable under Sec.324 of Indian Penal Code directing the accused to suffer rigorous imprisonment for fifteen months.

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#. The accused has not preferred appeal against the order of conviction. It is required to be noted that the accused aged about eighty years at the relevant time was prosecuted on a complaint being filed by one Kankuben on the allegation that on 11-3-1996 by causing injury with a firearm, accused committed an offence punishable under Sec.307 of Indian Penal Code and Sec.30 of the Arms Act. It appears that, Kankuben and her husband after taking supper were watching television programme at about 10.30 p.m. They were informed by one boy that Iliyas had a quarrel at Swaminarayan Complex and Police has taken his brother Iliyas in custody. Hearing this, Ramubhai rushed in the company of his wife to the said place, namely Swaminarayan Complex where accused, a watchman, was standing with his gun. From the FIR, it appears that as Iliyas was drunk, Police had taken him as well as one another person. There was some exchange of words and Faijubhai became angry and fired a gun on the person of Ramubhai on the thigh and on receiving the injury, he fell down. On a complaint being filed, Police commenced the investigation and submitted the charge-sheet after completion of investigation. The accused was committed to the Court of Sessions where charge was framed at exh.2 which was read over and explained to the accused and accused contended that he is entirely innocent. After considering the evidence led by the prosecution, oral as well as documentary, submissions made by the learned advocates and considering the statement of the accused, learned trial Judge recorded the findings as aforesaid.

#. It appears from the cross-examination that there was a scuffle between the accused and the injured-Ramubhai and his men. They tried to snatch away

the gun from the accused and during the scuffle, the fire took place accidently as a result of which, Ramubhai sustained injury. It was submitted by the accused that he is not at all responsible for the injury sustained by said person.

#. We have gone through the medical evidence which points out that the injury might have been caused by firearm but in the cross-examination, the doctor has stated that if the injury is sustained by a bullet, then there must be a puncture wound. If a person had sustained contused lacerated wounds, it is possible by hard and blunt substance. No bullet was recovered from the person who sustained the injury. However, he has stated that on both the sides, there were injuries which were in the nature of contused lacerated wound. He has stated in the cross-examination that entry wound will be smaller one while the exit wound will be bigger one. But on the person of the injured, there was no exit wound. In view of gangrene, the injured was operated and his right leg was amputed. Mr.Patel submitted that merely because of this cross-examination, it cannot be said that there was no injury by a bullet and if an injured sustained an injury by a bullet, necessarily offence would be punishable under Sec.307 of Indian Penal Code.

#. We have gone through the record and proceedings. It is difficult to accept the contention that there was any intention on the part of accused to cause an injury. The evidence is appreciated by the trial Court. Accidental firing appears to be probable, otherwise there would be entry wound and exit wound. It appears that, bullet might have scratched the thigh portion of the injured and that might have caused the injury, i.e. lacerated wound. When the doctor has positively opined that there was no exit wound and there was no bullet injury, it is more probable that the bullet must have touched and scratched the person of the injured and the trial Court on the material held that it cannot be held that there was any intention to cause the nature of injury which is alleged. From the record, Mr.Patel could not point out that the theory cannot be accepted. Once the trial Court having an advantage of seeing the witnesses has come to the conclusion, it is difficult to accept the contention raised by Mr.D.N.Patel, learned Addl. Public Prosecutor more particularly when the accused is held guilty for an offence punishable under Sec.324 of Indian Penal Code and he is ordered to suffer fifteen months rigorous imprisonment though he is aged about eighty years old. Considering the evidence on record, Mr.Patel was not in a position to point out that

the Court has committed error on coming to the conclusion.

#. We have perused the evidence which Mr.Patel wanted to go through and despite that, he was not in a position to point out that the finding recorded by the trial Court is perverse or not supported by evidence on record. He could not point out that the view taken by the trial Court is not a possible view.

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

> ".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. In the facts and circumstances of the case, both the appeals are rejected.

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